HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

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WRIT PETITION Nos. 8056, 8220, 8423, 8424, AND 8425 OF 2006

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Dated 28th April, 2006

Between:

P. Vijay Kumar and others.

… Petitioners

And

The Divisional Forest Officer,

Eluru, West Godavari District

and others.

… Respondents.

COMMON ORDER:

All these writ petitions involve common questions of fact and law, and, as such, they are heard together and are being disposed of by this common order.

For the sake of convenience, I refer to the averments made in writ petition No.8426 of 2006, filed seeking a writ of mandamus to declare the action of the petitioners in doing pisciculture in the fish tanks of the petitioners admeasuring Ac.21.89 cents in Survey Nos. 10.51/1, 1052/1, 1051/1, 10.51/6, 10.51/7 and 10.52/2C of Kaikaram village, Unguturu Mandal, West Godavari District as not contrary to G.O.Ms.No.120, dated 4.10.1999 and not contrary to the provisions of the Wild Life Act, 1972, which are to the following effect:

It is stated that the petitioners are the owners and possessors of land admeasuring

Ac. 4.38 ½ cents, Ac. 7.53 ½ cents and Ac. 10.97 cents respectively in Sy.Nos. 10.51/1, 10.52/1, 10.51/1, 10.51/6, 10.51/7 and 10.52/2C of Kaikaram village, Unguturu Mandal, West Godavari District. As the said lands have become unfit for cultivation due to frequent floods and inundation of the land, the petitioners are using the said lands for pisciculture for the last about 15 years and the revenue is being collected by the authorities. Revenue records also depict their lands as fish tanks. It is their case that though their lands are nearer to Kolleru Wild Life Sanctuary as notified under Wild Life Protection Act, 1972, but, they do not form part of Kolleru Wild Life Sanctuary as notified in G.O.Ms.No.120, dated 4.10.1999. It is also their case that in the absence of any acquisition of their lands as required under Section 24 of the Wild Life (Protection) Act, 1972, respondents have no authority to interfere with the pisciculture or to demolish their fish tanks constructed by them in their private patta lands.

The averments made and the reliefs claimed in the other writ petitions are similar and, therefore, they are not being referred to.

Counter affidavit has been filed by the Divisional Forest Officer on behalf of the respondents stating that Kolleru lake is one of the largest fresh water systems (wetland) of international importance, which attracts 189 rare and endangered species of 'Grey Pelicans'. The lake is a saucer like depression, which primarily acts as a flood regulator and moderator by absorbing the inflows from over 67 streams/drains and releasing the water slowly through the only outlet to the sea through Upputeru. Having regard to the importance of the avian fauna, the State Government issued preliminary notification of Kolleru Wildlife Sanctuary under Section 18 of Wildlife (Protection) Act, 1972 vide G.O.Ms.No.76, E.F.S. & T (For.III) Department, dated 25.9.1995 and after following the due procedure, final notification was issued in G.O.Ms.No.120, dated 4.10.1999 declaring Kolleru lake as Kolleru Wildlife Sanctuary. The validity of the said notification came to be questioned in writ petition No. 33587 of 1998 and batch before this court, wherein, this Court upheld the validity of the notification issued in G.O.Ms.No.120, dated 4.10.1999. It is stated that there are Special Leave Petitions pending before the Honourable Supreme Court of India and the Apex Court also affirmed the validity of the notification issued under the Wild Life (Protection) Act, 1972 and directed to take steps for demolition of the fish tanks constructed in the notified area of the sanctuary. Further, precisely, it is the case of the respondents that the lands of the petitioners are covered by the final

notification issued under Section 26-A of the Wild Life (Protection) Act, 1972 under G.O.Ms.No.120, dated 4.10.1999.

Shri C.Ramachandra Raju, learned counsel for the petitioners submits that the petitioners are owners of private patta lands and they have constructed fish ponds in their lands, which are not yet acquired, and, inasmuch as the said lands are not covered by the notification issued under Section 26-A of the Wile Life (Protection) Act, 1972 and the directions issued by the Apex Court are only confined to the fish tanks which are constructed in the notified area, the respondents cannot demolish the fish tanks constructed by them in their patta lands which are existing for the last 15 years.

On the other hand, it is submitted by the learned Advocate-General appearing for the respondents that the preliminary notification as contemplated under Section 18 of the Wild Life (Protection) Act, was issued as early as in 1995 and after following the due procedure, the final notification was issued in G.O.Ms.No.120, dated 4.10.1999 and having regard to the boundaries notified for the sanctuary, all the lands of the petitioners in which the petitioners are now undertaking pisciculture are within the notified area of the sanctuary and in view of the prohibition with regard to carrying on the activity of pisciculture, it is not open for the petitioners to continue their commercial activity. It is further submitted that inasmuch as the validity of G.O.Ms.No.120, dated 4.10.1999 has already been upheld by this Court, it is not open for the petitioners to continue their business of pisciculture and the steps for demolition of the fish ponds are being undertaken in view of the directions of the Apex Court in its order dated 10.4.2006.

From the above contentions, the question that arises for consideration in these cases is whether the lands of the petitioners are covered by statutory notifications issued under the Wild Life (Protection) Act, 1972?

It is not in dispute that in the areas, which are covered by notification under Section 26-A of the Wild Life (Protection) Act, 1972, the activity of pisciculture on commercial basis is prohibited. However, fishing with traditional methods using mavus, nets of size (which does not cause damage to seed but catches only fish of harvestable size) is permitted by such notification. The State Government is empowered to constitute an area as a sanctuary under Section 18 of the Wild Life (Protection) Act, 1972, which reads:

"18. Declaration of sanctuary:- (1) The State Government may, by notification, declare its intention to constitute any area other than area comprised with any reserve forest or territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing Wild Life or its environment.

(2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area.

Explanation:- For the purposes of this section, it shall be sufficient to describe the area by roads, rivers, Bridges or other well-known or readily intelligible boundaries."

After issuance of notification to constitute an area as a sanctuary, declaration specifying the limits of the area which shall be comprised within the sanctuary has to be issued under Section 26-A of the Wild Life (Protection) Act, 1972, which reads thus:

"26-A Declaration of area as Sanctuary:- (1) When-

a. a notification has been issued under Section 18 and the period for preferring claim has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a sanctuary, have been disposed of by the State Government, or

b. any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing Wild Life or its environment is to be included in a Sanctuary,

the State Government shall issue a notification specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be sanctuary on and from such date as may be specified in the notification

... .

... ..."

In these cases, Government of Andhra Pradesh declared the areas specified in the schedule to G.O.Ms.No.76, Environment, Forests, Science and Technology (Forest.III) Department, dated 25.9.1995 as "The Kolleru Wild Life Sanctuary" under Section 18 of the Wild Life (Protection) Act, 1972. Thereafter, G.O.Ms.No.120, dated 4.10.1999 has been issued declaring the areas for such sanctuary stating that the boundary runs along the contour at +5 MSL as marked in the map kept in the O/o Principal Chief Conservator of Forests, Andhra Pradesh, Hyderabad and prescribing

the limits of the Sanctuary on East –A to B, South-B to C, West-C to D and North-D to A.

The principal contention of the learned counsel for the petitioners is that there is no notification including their lands with survey numbers in the area of Kolleru Wild Life Sanctuary and as such, the respondents have no authority to demolish the fish tanks constructed by them in their lands in which they are carrying out the pisciculture.

On the other hand, learned Advocate-General submitted that the notifications have been issued under Sections 18 and 26-A of the Wild Life (Protection) Act, 1972 specifying the boundary descriptions of the Sanctuary, wherein all the lands of the petitioner are covered by such notification. Therefore, the respondents are justified in seeking to demolish the fish ponds of the petitioners wherein pisciculture is developed. Further, the validity of G.O.Ms.No.120 came to be questioned before this Court in W.P.No. 33587 of 1998 and batch and a Division Bench of this Court upheld the validity of the said G.O.120 and directed that no pisci-culture/acquaculture/shrimp culture should be permitted to be undertaken within the Kolleru Lake sanctuary and only traditional methods of fishing as directed in G.O.Ms.No.120, dated 4.10.1999 should be permitted. The Supreme Court in I.A.Nos.1486-87 in WP© 202/1995 directed that the demolition of all fish tanks has to be done at the earliest point of time and before the onset of the monsoon.

Notification under Section 18 of the Wild Life (Protection) Act was issued in G.O.Ms.No.76, Environment, Forests, Science and Technology (Forest.III) Department, dated 25.9.1995 declaring the intention of the Government to constitute an area as a sanctuary and thereafter, G.O.Ms.No.120, dated 4.10.1999 has been issued declaring the area of such sanctuary by prescribing the boundaries. Explanation to Section 18 of the Wild Life (Protection) Act, 1972 provides that it shall be sufficient to describe the area by roads, rivers, Bridges or other well-known or readily intelligible boundaries and Section 26-A of the Act necessitates only specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be sanctuary on and from such date as may be specified in the notification. The Act nowhere mandates that the notification should be issued specifying each and every survey number of the village and a comprehensive reading of the provisions of Sections 18 and 26-A indicates that

boundaries of the sanctuary can be notified with any notable marks, in which case, in which case, it is sufficient compliance of the provisions of the Act. Therefore, the contention of the learned counsel for the petitioners that since the private patta lands of the petitioners are not notified under G.O.Ms.No.120, respondents have no manner of right or authority to interfere with the pisciculture being carried out by them in such lands and demolish their fish ponds, falls to ground. Further more, the validity of G.O.Ms.No.120 was tested before this court in Writ Petition No.33587 of 1998 and batch wherein a Division Bench of this Court by order dated:30.7.2001 held thus:

"(1) We declare that the notification issued in G.O.Ms.No.120 dated 4.10.1999 is valid.

(2) The respondents shall forthwith take adequate steps for stoppage and regulation of effluents discharged from the industries and municipalities into Kolleru lake and strictly adhere to the standards laid down by the Ministry of Environment, Government of India for the purpose of preservation and maintenance of the lake and ecology in accordance with law and State shall make all endeavors to bring back Kolleru Lake to its pristine glory.

(3) No Pisci culture/acqua culture/shrimp culture should be permitted to be undertaken within the Kolleru Lake sanctuary and only traditional methods of fishing as directed in G.O.Ms.No.120 dated 4.10.1999 should be permitted. Any person intending to take recourse to acqua culture or pisci culture or shrimp culture must file requisite applications before the appropriate acqua culture authority provided their lands fell outside the notification dated 4.10.1999 and the area of sanctuary.

(4) State shall ensure for removal of all encroachments of Kolleru lakebed area in accordance with G.O.Ms.No. 120 dated 4.10.1999."

Even the validity of the recommendations made by Central Empowered Committee in its report dated 20th March, 2006 with regard to the implementation of the notification issued in G.O.Ms.No.120, dated: 4.10.1999, whose validity has been upheld by the Division Bench of this Court, was the subject matter of adjudication by the Supreme Court and the Supreme Court in I.A.Nos. 1486-87 in Writ Petition © No.202 of 1995 held thus:

"…..Therefore, it is not open to the objectors now to say that they have made huge investments which would be lost if the report of the CEC is implemented. As stated hereinabove, in the preceding year free flow of water into the sea was blocked for 40 days. Such blocking of water also affects the livelihood of farmers cultivating lands in the upstream mandals. The oil cakes used as manure also pollute the Sanctuary. It is true that there are other effluents which also pollute the lake. By issuance of the Notification the government has taken a step in the right direction and it is not open to this Court to tell the government as to which of the three effluents in terms of their discharge should be regulated first in point of time. In the present case, as stated above, the blockage is due to discharge of effluents from three sources, namely, fish tanks in and around the lake

containing high concentration of nutrients, effluents from municipal drainage and effluents emerging from the industries located in and around the above two districts. Destruction of the fish tanks is one of the steps taken by issuance of the Notifications. That has to be done at the earliest point of time, particularly, before the onset of the monsoon."

Inasmuch as the lands of the petitioners come within the boundaries of the Sanctuary notified in G.O.Ms.No.120, dated: 4.10.1999, whose validity has been upheld by a Division Bench of this Court and also the Apex Court, and the pisciculture is being carried out contrary to the said notification issued under Section 26-A of the Wild Life (Protection) Act, 1972, it is not open for the petitioners to plead that the demolition is being taken up illegally without even issuing prior notice also and the said contention is liable to be rejected. When, per se, the activity itself is in violation of the notification issued notifying the sanctuary under the provisions of the statute, the petitioners cannot plead for compliance of the principles of natural justice. In any event, such a time-bound drive is pursuant to the directions of the Honourable Supreme Court. Therefore, there is no ground for interference with the action of the respondents.

For the foregoing reasons, I do not find any merits in the writ petitions, which are dismissed at the stage of admission. No costs.

2006. **(R.SUBHASH REDDY, J.)**

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